## ZONING BOARD OF ADJUSTMENT MARCH 2, 2011 MEETING DRAFT MINUTES

Board members present included Acting Chairman Nicholas Wallner, Robert Harrison Jr., James Monahan, Bob Boley and Steve Norton. Also present Zoning Administrator Craig Walker and Rose Fife, Clerk of the Board.

**05-11** <u>Tina Baril</u>: Applicant wishes to construct an attached 19' x 26' garage and requests Variances from Article 28-4-1(h), The Table of Dimensional Regulations, to permit the placement of a garage with a rear lot line setback of approximately 4 inches where a 25 foot rear setback is required and a 7 foot side setback from the northerly property line where a 10 foot setback is required, for property located at 16 Perkins Court in a UT Urban Transitional District.

Tina Baril testified. (Aerial photos of the property were displayed) She wants to build a garage attached to her house in the rear yard. Access to the garage would be via a shared passageway north of Prospect Street. Access in and out of Perkins Court is impossible. There is no turn around point. If she had a garage she would be able to come into the garage and get out.

Carl Robbins of Robbins Quality Carpentry also testified. Ms. Baril drives one vehicle and stores one. She would like to protect her vehicles. It is close to the property line in the rear.

Tina stated that it is a hazardous area. If there were a fire, an ambulance or fire truck wouldn't be able to get in and out with all the snow. It is not getting plowed down there. The neighbors do not help keep that area cleaned. If she put in a garage, she would pave that area. The garage would increase the property values. It will make her more comfortable that the Fire Department would have better access to her property.

Walker gave the Board information as to the location of Perkins Court. He also stated that Perkins Court is not a City accepted street. It is a private right-of-way. The City maintains it as an emergency lane for Fire, etc. to be able to get back there. There is also a passageway that continues northerly from the end of Prospect Street. The property owners adjacent to the passageway all have rights of passage including the city which owns three properties on the east side of the passageway.

Tina stated that she works for the school district as a bus driver and she keeps the area cleaned up as best she can. She has a special needs child that needs transportation. She has a call into the Planning Board and a call into Matt Walsh asking about if the city is interested in selling any of the property to the east of her property.

Carl Robbins stated that the house is 37 feet in length. 62 feet back from the front property line is the length of the property.

Norton asked where the property was on the street. Do you enter on Perkins Court? (Carl stated that she can either enter on Perkins Court or on the Prospect Street right of passage. She parks in back. The front has a one car driveway.) Norton asked how construction of a garage would change those problems. (When you come down Prospect Street, she will be able to use a remote control to open the garage door to pull into the garage and then she will have a place to push the snow.) Carl stated that the passage way is not passable to 18 (20) Perkins Court. The two sheds in the passage way will be removed. Monahan asked who owns the sheds. (Tina stated that 16 Perkins Court (herself) owns them.) Monahan asked if they can get onto their property either by Perkins Court or the pass way? (Yes.) Is there a curb cut there?

(No.) Will they access the property from the pass way? Boley wants to be shown where the 2 cars park right now. (Tina showed him on the maps.) Where will the garage go? (She showed him on the maps.) Does the garage door face Prospect Street? (No, it will face the pass way.) Wallner asked how she backed out with the shed in the rear. (She doesn't drive that car, it's parked there.) Wallner asked how many neighbors have garages. (12 Perkins Court, 15 Perkins Court and across from 12 Perkins Court.)

In favor: none.

In opposition: Nance I Am, 14 Perkins Court testified. Article 28-4-1e states that the maximum lot coverage cannot exceed 75%. She believes it is between 89-92% lot coverage. (Walker came up with approximately 72%) She submitted photographs that she took today. She explained them. Her driveway and steps are close to the road and clear of snow. The left of her house is another paved driveway. Behind her house they are parking a flatbed truck. If approved it would be detrimental to her property value. She would be surprised if she filled in the property. Since 2005 she has put up a fence and blocked the pass way with it. This is a hassle for her. The fire concern should be for the person at 18 Perkins Court on the other side of her. It would be an eyesore.

Comments from Code Administration: Walker spoke with the City Surveyor and he feels what is in the packet submitted is correct. They have approximately 19.5 feet to the property line. If they were to improve the passage way there would have to be an agreement with the City.

Harrison asked if access to the pass way was a second curb cut to Prospect Street and was it allowed. (It is not an accepted City Street and therefore not a second curb cut.) Monahan asked about the shed and fence issue on the City property and passage way. (They are and both on city property and are ongoing issues with the property owner.) Monahan asked which property was owned by the City (Walker showed them.) Norton asked for clarification of the passage way. Walker read the deed; each adjacent property owner has ownership rights. Originally the property was owned by B&M Railroad. Monahan asked if the City were responsible to plow back there. (No they are not at all.) Walker stated that Ms. Baril approached Matt Walsh today about selling the City property. This would have to be discussed with people to the north and south of her property. The City is meeting next week with regard to her request.

Rebuttal by Carl Robbins. The fence does not exist now. The neighbor blocks her in and is parked in the pass way also. The backdoor is not accessible. The garage would be 24 feet deep. Boley asked how deep from the back of the house? Tina stated 19 feet – as wide as the back of her house. Norton asked if the addition would go to the house peak. Carl stated that it would match the slope on the back of the house.

DECISION: A motion to TABLE the request was made by Monahan, seconded by Norton and passed by a 4-1 vote with Harrison in the minority. Monahan felt that this is a dense part of the City and a dense property. He would like to await the City meeting and get some feedback on if the City might be willing to sell the property it owns, etc. Norton would be tempted to say no as the lot is no different than the neighboring lots.

**06-11** Ken Smith, Jr. & Lee Adams: A special exception under Article 28-8-4(b), Change of Non-Conforming Use, to permit an existing non-conforming retail sales use (principal use H-1) to be replaced by a hair salon (service use of less than 5,000 square feet, principal use D-1) and to continue the non-conforming parking, all for property located at 20 Walker Street in an RN Residential Neighborhood District.

Attorney Jed Callen testified. (Aerial photos of the property were displayed) This is a multi-use building that was built approximately in 1930. It has been residential and commercial since probably construction. It is a pre-existing non-conforming use. It has been a convenience store in the past. They would like to lease the first floor corner retail space to a hair salon that might also do nails and possibly sell hair care products.

They would be changing one non-conforming use for another non-conforming use. It potentially had more volume of customers than there would be as a hair salon. It is a less intense use.

Harrison asked what was there now. Attorney Callen stated that it is vacant now. There was a store, a used furniture store and a computer repair store there in the past. There will be fewer people there for a longer time. To some degree there would be no parking as they would have walk-in customers.

Harrison asked if the stylists are in business now. Attorney Callen was not sure.

Walker stated that there was discussion of a 2 chair salon there (but that was not a restriction). Norton asked for clarification of the uses.

Attorney Callen showed the portion of the building that would be occupied, or floor plans. The space is approximately 20' x less than 30' on the first floor.

Harrison asked if there were apartments there. (Yes, three apartments.) What about the parking? (There is a non-conforming parking layout and it has been that way since the building was built.)

Attorney Callen went on to say that his client has hopes for this tenant as a hairdresser. He would like approval that if the use doesn't get approved then he can use the retail use again. The use was not abandoned.

In favor: Meredith Hatfield, 5 Perkins Street. She generally supports some kind of business being there. The last use was a computer repair shop. The tenants in that building keep snow clear and park up on the sidewalk, which is not an issue. She is concerned with traffic and parking though. There is a lot of foot traffic. If approved could the Board place some sort of a limit on parking so that both sides of Bradley Street wouldn't be lined with cards. Wallner stated that this Board could not do that. Walker referred her to Engineering to speak with the Parking Committee.

Comments from Code Administration: Monahan asked if they need to come back if this request is approved and they want retail again. Walker stated that no they would not unless they started to make physical improvements to the space that constituted an overt act of discontinuing the retail use. If approved fro a hair salon and not implemented the Special Exception would expire after 2 years. Monahan asked if approved for a hair salon and they operate for 6 months, would returning to the retail use be allowed then. Walker stated that no, then it would be a hair salon.

Rebuttal by Attorney Callen. The parking should not be affected by a small hair salon.

DECISION: A motion to approve the request was made by Boley, seconded by Norton and passed by a 4-1 vote with Harrison in the minority. Harrison stated that it is non-conforming as they have 3 rental units and they would need 10-12 spaces and they have none. He can't support this. Norton stated that the residential use is grandfathered and the new use does nothing to change the parking demands.

A motion to approve the first half of the February 9, 2011 Minutes was made by Monahan, seconded by Boley and passed by a unanimous vote. A motion to approve the remainder of the February 9, 2011 Minutes was made by Harrison, seconded by Monahan and passed by a unanimous vote.

A TRUE RECORD ATTEST,	
	, CLERK
ZONING BOARD OF ADJUSTMENT	,